HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. No. 34962 of 1997

DATED: 04-04-2007

Between:-

G.Narasimha Murthy s/o late Narasimha Appadu, aged 46 years, E.450979, Ex-Conductor, R.T.C. Appalagraharam, Manthina post, Santhakaviti Mandal, Via: Ponduru (M), Srikakulam District.

…PETITIONER

And

The Depot Manager, A.P.S.R.T.C. Palasa and three others.

…RESPONDENTS

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O R D E R

Aggrieved by the Award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D. No. 94 of 1993 dated 01-02-1997 the petitioner-workman has approached this Court.

Facts, in brief, are that on 22-08-1991 while the petitioner was conducting the bus from Rajahmundry to Palasa during Godavari Pushkaram, the check was carried out and pursuant thereto a charge memo was issued to the petitioner for certain cash and ticket irregularities. The charges leveled against the petitioner are as under:-

> " 1) For having violated the rule 'Issue & Start' which constitutes misconduct under Regulation, 28 of APSRTC Employees' (Conduct) Regulations, 1963.
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> 2) For having collected the fare from two passengers at boarding point and failed to issue tickets to them who boarded your bus at Visakhapatnam and bound for Palasa Ex-stage 5 to 1 which constitutes misconduct under Reg. 28(x) of APSRTC Employees (Conduct) Regulations, 1963.
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> 3) For having closed all ticket tray numbers of all denominations in the S.R. up to Stage No.4 without completing the issue of tickets which constitutes misconduct under Reg. 28 (ii) of APSRTC Employees (Conduct) Regulations, 1963."

On the explanation, submitted by the petitioner, not being found satisfactory, a domestic enquiry was conducted and the Enquiry Officer held the petitioner guilty of the charges. A show cause notice was issued to the petitioner to which the petitioner did not submit any reply. After perusal of the entire record, the disciplinary authority i.e. Depot Manager imposed the punishment of removal from service on the petitioner herein. The appeal preferred by him to the Divisional Manager was rejected and his review before the Regional Manager was also rejected.

Aggrieved thereby, the petitioner approached the Industrial Tribunal-cum-Labour Court, Visakhapatnam (for short 'the Tribunal') under Section 2-A(2) of the Industrial Disputes Act. Before the Tribunal the counsel for the petitioner filed a memo on 20-02-1996 stating that he was not challenging the validity of the domestic enquiry. As such the Tribunal examined the matter under Section 11-A of the Industrial Disputes Act. The Industrial Tribunal perused the evidence on record and noted that the bus was proceeding from Rajahmundry to Palasa via Visakhapatnam and the check took place at Ranasthalam wherein the checking TTI found two passengers without tickets, that the statement of passengers was recorded on the spot which showed that they had boarded the bus at Visakhapatnam for Palasa and had paid Rs. 64/-, i.e. Rs.32/- each, to the conductor but were not given tickets by him. The Tribunal noted that

the enquiry officer, on analysis of the evidence on record, had rightly come to the conclusion that the petitioner was guilty of the above three charges. The Tribunal held that the enquiry officer had rightly disbelieved the defence raised by the petitioner herein that the two ticketless passengers did not take tickets stating that their people, travelling in the said bus and sitting at some other place, would take tickets, that the petitioner could not check passengers with tickets as the bus was overloaded as he was not well that day. The Tribunal noted that the petitioner was conducting the bus services on long distance route and there was absolutely no justification for him not to check the passengers over such a long distance till the bus reached Ranasthalam from Visakhapatnam and that the enquiry officer had rightly disbelieved the excuse pleaded by the petitioner herein, and considering all relevant circumstances, had rightly held that the petitioner had failed to observe the rule of issue and start, had collected Rs. 64/-from two passengers, had failed to issue tickets to them and had closed all ticket tray numbers of all denominations in the SR upto stage No.4 without completing the issue of tickets. The Tribunal held that it did not find any valid circumstances which vitiated the findings of the enquiry officer and held that the findings of the enquiry officer are valid, proper and not liable to be set aside.

On the quantum of punishment, the Tribunal noted the contentions of the management that the petitioner was holding the

responsible position of holding custody of APSRTC fund and had collected amounts without issuing tickets to two passengers and had misused his position and, since this was a misconduct involving moral turpitude, it could not be viewed lightly especially in view of his previous bad record. The Tribunal noted that earlier the Divisional Manager, in his proceedings under Ex.M-2, had given an opportunity to the petitioner to conduct himself properly when he had preferred an appeal against the order removing him from service at Palakonda Depot for small cash and ticket irregularities. The Tribunal also noted that the petitioner, in his petition, admitted that he was earlier involved in cash and ticket irregularities. The Tribunal noted that the petitioner did not mend himself in spite of his misconduct being condoned earlier by the management in the fond hope that he would correct himself and that, in these circumstances, the misconduct committed by the petitioner could not be left and no lenient view could be taken in the matter. The Tribunal held that the punishment of removal from service was proportionate and warranted and that the punishment of removal from service imposed on the petitioner was valid.

In **Karnataka State Road Transport Corporation Vs. B.S. Hullikatti**[1], the Supreme Court observed that it is the responsibility of bus conductors to collect correct fares from the passengers and deposit the same in the Corporation, that conductors act in a fiduciary capacity, it would be gross misconduct if knowingly they did not collect any fare or the correct

amount of fare and that, in such cases, interference with the punishment of dismissal from service was a case of misplaced sympathy by the Labour Court. In **Regional Manager, Rajastan State Road Transport Corporation Vs. Ghanshyam Sharma**[2], the Supreme Court held that the proved acts amounted either to a case of dishonesty or of gross negligence and bus conductors, who by their actions or inactions, cause financial loss to the Corporation, are not fit to be retained in service. In **V. Ramana Vs. A.P.S.R.T.C.**[3], the Supreme Court held that Courts/Tribunals should not interfere unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal.

It is well to remember that, while exercising Certiorari jurisdiction under Article 226 of the Constitution of India, this Court does not sit in an appeal over findings of fact recorded by the Tribunal nor does it re-appreciate the evidence on record. In the present case, a memo was filed on behalf of the petitioner conceding to the validity of the domestic enquiry and, therefore, the Tribunal was only required to exercise its jurisdiction under Section 11-A of the Industrial Tribunal Act to reappreciate the evidence on record and to examine the proportionality of punishment. On a detailed analysis of the evidence on record, the Tribunal has rightly concurred with the finding of the enquiry officer. The charges leveled against the petitioner have been held established. On the quantum of punishment, the Tribunal held

that the punishment imposed on the petitioner was proportionate to the charges held established. It is well settled that it is only when the punishment imposed is one which cannot be imposed under the Regulations or the punishment imposed is one which shocks the conscience of this Court would it necessitate interference. The charges held established involve misappropriation of funds of the A.P.S.R.T.C. It cannot, therefore, be said that the punishment imposed on the petitioner, or the order of the tribunal concurring with the punishment imposed, is one which shocks the conscience of this Court. The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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RAMESH RANGANATHAN, J

Dated: 04-04-2007
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[1] AIR 2001 SC 930
[2] 2002(1) LLJ 234
[3] AIR 2005 SC 3417